

## **REMARKS**

### **FORMAL MATTERS:**

Claims 1-14 were examined and rejected. Claims 15-25 were withdrawn in response to an election of claims in response to a restriction requirement. Claims 13 and 14 were indicated to be free from the art of record.

By this Amendment, claims 1-25 have been cancelled and claims 26-36 have been added. Independent claim 26 is directed to a method for determining the concentration of an analyte in a sample utilizing a system including an optical meter where a control solution used to test the meter comprises a reflectance component comprising a dye having a maximum absorbance of visual light outside that of hemoglobin (the limitation of original claim 13). As such, new claim 26 includes the limitations of original claim 1 (but for those directed to an electrochemical system) and allowable original claim 13, and is therefore allowable over the art of record along with dependent claims 27-36. Support for the remaining added claims amendments is found throughout the specification and in the original claims. Accordingly, no new matter has been added.

Applicants respectfully request reconsideration of the application and allowance of the pending claims in view of the remarks made herein.

### **REJECTIONS UNDER §112**

Claims 1-14 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite.

As claims 1-14 have been canceled, this rejection has been made moot.

### **REJECTIONS UNDER §102**

Claims 1, 5 and 6 were rejected under 25 U.S.C. §102(e) as being anticipated by Tokunaga. Claims 1, 4-8, 10 and 12 were rejected under 25 U.S.C. §102(b) as being anticipated by Ye. Claims 1-12 were rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of each of Tokunaga and Ye in view of Rapkin.

These rejections have been made moot in view of the cancellation of claims 1-12.

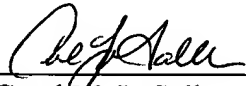
**CONCLUSION**

Applicant submits that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-0815, order number LIFE-023.

Respectfully submitted,  
BOZICEVIC, FIELD & FRANCIS LLP

Date: 4/19/04

By:   
Carol M. LaSalle  
Registration No. 39,740

BOZICEVIC, FIELD & FRANCIS LLP  
200 Middlefield Road, Suite 200  
Menlo Park, CA 94025  
Telephone: (650) 327-3400  
Facsimile: (650) 327-3231

F:\DOCUMENT\LIFE\023\resp to oa 012104.doc